

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 2495 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

CHANDRAKANT K BHATT

Versus

STATE OF GUJARAT

Appearance:

MR MB PARIKH for Petitioners

MR H.F.MEHTA,A.P.P. for Respondent No. 1

SERVED for Respondent No. 2

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 02/11/96

ORAL JUDGEMENT

Rule.

The original accused in Criminal Case No.490 of 1996 have filed the present petition to quash the said criminal proceeding.

2 Respondent No.2- Prafullabhai is cousin brother

of petitioners Nos. 1 to 6. Respondent No.2's father-Ravjibhai had four brothers, namely, Karsanjibhai, Madhavjibhai, Odhavjibhai and Nagjibhai. The present petitioners are the children of the said four brothers. The said five brothers were members of the Hindu Joint Family and they had immovable property of agricultural lands in the village Hindorana. It seems that the present petitioners Nos. 1 to 6, 9 and 10 had left the village and they had gone out of the village on account of securing jobs, whereas petitioner No.7 and 8 had also left the village on account of their marriage. The father of respondent No.2- Ravjibhai had remained in the village and he was looking after the agricultural lands. After Ravjibhai, present respondent No.2 Prafullabhai was looking after the said agricultural lands. It seems that, in the month of April, 1995, this respondent No.2- Prafullabhai entered into an agreement to sell portion of the said agricultural lands. It seems that thereafter, the present petitioners have filed Special Civil Suit No.35 of 1995 in the Court of Civil Judge (S.D.), Amreli seeking injunction against the respondent No.2 from executing the said agreement to sell and for partition and separation of their shares. In the said suit by filing an application, they had also sought an interim injunction. The said application for an interim injunction has been decided in favour of the present petitioners on merits. The respondent No.2 had challenged the said order by preferring an appeal before this court and the said appeal was also rejected.

3. But, in spite of the above circumstances, the respondent No.2 has filed the Criminal Case in the Court of Judicial Magistrate First Class, Rajula bearing No.490 of 1996 alleging that his uncles i.e. fathers of the petitioners Nos.1 to 6, 9 and 10 as well as the petitioners had conducted and behaved in such a manner that the respondent No.2 was the owner of the family immovable property and because of the said conduct and behaviour of them, he had entered into an agreement to sell small part of the agricultural land and the petitioners by bringing the said Special Civil Suit have committed the offence of cheating and the learned Magistrate was pleased to issue process against the present petitioners, and, therefore, they have come before this court to quash the said criminal proceeding.

4 I think there could not be any better example of abuse of process of law than the present criminal proceeding in question. The material on record clearly shows that the learned Judicial Magistrate has blindly passed an order of issuing of process against the present

petitioners without reading complaint itself. It seems that the order in question has been passed not only by non-application of mind, but also on account of something else. When the complainant himself has admitted in his complaint that the fathers of the present petitioners are his uncles and the land in question is an ancestral land and when there is no partition under which the land in question is claimed to have been allotted to his father's share or to his share or when he does not claim that there were registered relinquishment deeds by the fathers of the present petitioners merely because the petitioners who are co-owners of the respondent No.2 happen to be out of possession on account of their residing out of village and happen to see the possession of the co-owner-respondent No.2 who does not claim that he was holding the property adversely to them, the learned Magistrate has issued the process against the present petitioners for the offence of cheating merely because there is reference of the said sections under which he has issued process. In the complaint, the complainant has also clearly admitted that the present petitioners have already brought a civil suit against him and also obtained an order in that civil suit regarding the same property. In spite of this, the learned Judicial Magistrate not only entertains the complaint, but proceeds to pass a judicial order of issuing of process against the present petitioners. Therefore, in view of the clear averments made in the complaint by the complainant himself, the conduct of the learned Judicial Magistrate in issuing the process constrained me to observe that the learned Judicial Magistrate has passed the order for some reasons other than the application of law.

5. From the averments made in the complaint, it is quite clear that no prudent man could accept the said complaint and issue of process against the petitioners. From the averments made in the complaint itself, it is quite clear that the real dispute between the parties is a civil dispute and there is no question of any cheating by the present petitioners. Admittedly the property in question is an ancestral property of the petitioners and the respondent No.2 and there is no question of any delivering of property by the respondent No.2 to the petitioner. There was no question of committing any cheating. I, thus, hold that the petition will have to be allowed. The order of issuing of process as well as the criminal case on the file of learned Judicial Magistrate, Rajula will have to be quashed and set aside. I also direct that the order of this court be also placed before the Unit judge who is having the supervision over

the said Magistrate for taking appropriate action against him.

Thus, the petition stands allowed.
Rule is made absolute.

* * * *